



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: AAP - 203690

PRELIMINARY RECITALS

Pursuant to a petition filed on November 9, 2021, under Wis. Admin. Code §DCF 50.065, to review a decision by the Adoption Assistance regarding Adoption Assistance Program, a hearing was held on January 5, 2022, by telephone.

The issue for determination is whether the agency correctly discontinued adoption assistance payments after the age of 19 as a result of failing to meet all requirements for an extension of benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 West Washington Avenue
Madison, WI 53703

By: [REDACTED]

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner and her husband adopted a special needs child, A.L.G., who turned 19 in November 2021.

3. Petitioner signed an adoption assistance agreement in 2014. In that agreement, petitioner was informed that assistance payment would discontinue upon A.L.G. reaching 18 years of age. Exceptions provided were that benefits could continue up to 19 years of age if the adopted person was a full-time student in high school or the equivalent. Benefits could continue up to the age of 21 if all of the following were met:

a) The adopted person is a full-time student in high school or the equivalent; b) the department determines that the adopted person has a mental or physical handicap which warrants the continuation of assistances under 42 USC 673; c) the adopted person is not eligible for other benefits (e.g., SSI, SSA, VA); and, d) the adopted person otherwise lacks adequate resources to continue in high school or the equivalent.

Exhibit R-1.

4. On or about July 7, 2021, the agency notified petitioner that adoption assistance payments would end the month of the child's 19th birthday unless the child met eligibility requirements listed in the letter. Set forth in the letter as a requirement for continuation of benefits was that the child not be eligible for other benefits and must apply for and be denied Supplemental Security Income (SSI). The letter further instructed petitioner to submit the SSI denial letter. Exhibits R-2, R-5, and R-7.
5. In August 2021, petitioner returned a Request for Continuation of Adoption Assistance for a Child Over Age 19 form to the agency. Preprinted on the form were the requirements for the child to qualify for adoption assistance after turning 19. These requirements included that the child applied for and was denied SSI disability benefits. Also preprinted on that form was the instructions that "You must send a copy of the notice of denial of SSI disability and a description of your child's disability with this form." Petitioner checked the box in the form indicating A.L.G. was not eligible for SSI, SSA, or VA benefits. Petitioner did not provide a copy of the denial of benefits. Exhibit R-7.
6. On or about November 4, 2021, the agency issued petitioner a Notice of Decision on Adoption Assistance Eligibility Status. The notice indicated that the adoption assistance would not continue after age 19 as the child had not met all of the requirements for an extension of benefits. The notice indicated the last payment would be November 2021. Exhibits R-2 and R-8.
7. On November 9, 2021, petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Adoption assistance is a benefit paid to facilitate the adoption of children with special needs. Wis. Admin. Code, §DCF 50.01(1). Once assistance is approved for an adopted child, the child remains eligible for the benefit until she reaches 18 years of age unless she remains in high school or the equivalent, in which case assistance can continue up to age 19. §DCF 50.15(2)(b) and (3). As the adoption assistance agreement became effective prior to the child's 16th birthday, the following criteria must be met for the adoption assistance benefits to continue beyond her 19th birthday:

(3) ADOPTION ASSISTANCE ELIGIBILITY AFTER ADOPTEE ATTAINS 18 YEARS OF AGE.

(a) Parents of an adoptee who is 18 years of age or older may continue to receive monthly adoption assistance payments if no change specified in sub. (1) (a) 3. to 10. affecting eligibility has occurred and any of the following conditions is met:

1. The adoptee is under 19 years of age, is a full-time student at a secondary school or its vocational or technical equivalent, and is reasonably expected to complete the program before reaching 19 years of age.
2. The adoptee is under 21 years of age and all of the following conditions are met:
 - a. The adoptee is a full-time student at a secondary school or its vocational or technical equivalent.
 - b. The department determines that the adoptee has a mental or physical disability that warrants the continuation of adoption assistance.
 - c. **The adoptee is not eligible for social security disability insurance under 42 USC 401 to 433 or supplemental security income under 42 USC 1381 to 1385 based on disability.**
 - d. The adoptee otherwise lacks adequate resources to continue in secondary school or its vocational or technical equivalent. ...

§ DCF 50.15(3)(a)(2) (emphasis added).

In this case, it is undisputed that Petitioner did not apply for social security benefits for A.L.G. Petitioner indicated that the Social Security Administration (SSA) would not allow her to apply as she did not have required documentation.

An administrative law judge does not possess equitable authority and must apply the law as written. Petitioner is seeking equitable relief from the clearly stated requirements of the law. I understand her frustration with the complexity of the situation and that she does not have the necessary documentation to apply for the social security benefits. However, there is no exception to the requirement that her daughter not be eligible for such benefits in order to continue the adoption assistance past the age of 19. I cannot order equitable relief from this requirement. As she has not applied for those benefits, she has not formally been denied. Moreover, Petitioner did not provide any documentation from the SSA indicating A.L.G. was not eligible to apply for benefits or was otherwise ineligible to receive such benefits. As such, I must uphold the agency's discontinuance of adoption assistance as of November 2021.

At hearing, petitioner was provided a telephone number for the ADRC in Milwaukee. This resource may be able to assist her in obtaining necessary documentation and applying for social security benefits. I add that she may also be able to obtain assistance from a non-profit law firm that provides free legal services, such as Legal Action of Wisconsin (ph: 1-855-947-2529). It was further noted by the agency representative that if petitioner applies for the social security benefits on A.L.G.'s behalf and is found ineligible, she can reapply for adoption assistance at that time. Proof of the denial of social security benefits would need to be forward to the agency.

CONCLUSIONS OF LAW

The agency correctly discontinued adoption assistance payments as of the child's 19th birthday as a result of petitioner failing to meet all requirements for an extension of benefits.

THEREFORE, it is

ORDERED

That petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

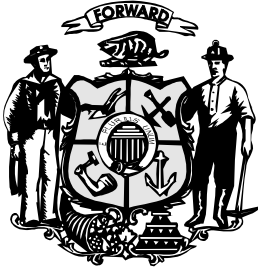
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 West Washington Avenue, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of January, 2022



\s _____
Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 24, 2022.

Adoption Assistance

